

Message Text

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PAGE 01 NEW DE 08034 171516Z

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FM AMEMBASSY NEW DELHI

TO AMCONSUL CALCUTTA NIACT IMMEDIATE

INFO SECSTATE WASHDC 2118

C O N F I D E N T I A L NEW DELHI 8034

E.O. 11652: GDS

TAGS: CASC

SUBJECT: HARCOS AND FLETCHER

REF: STATE 127285 (REPEATED CALLCUTTA)

1. REFTTEL REFERS TO DISCUSSION BETWEEN CONSULAR OFFICER AND HARCOS' LAWYER BHOSE (CALCUTTA 1107 RPTD TO DEPT AS DELHI 7554) DURING WHICH BHOSE SAID BAIL WAS NOT ALLOWED BECAUSE INDIA AND THE US DO NOT HAVE AN EXTRADITION AGREEMENT. EARLIER DISCUSSION OF BAIL INVOLVED PROPOSALS THAT CONSUL GENERAL STAND GUARENTEE AND PROVIDE QUARTERS FOR PRISONERS AT THE CONSULATE. THIS LINE WAS ALSO REFLECTED IN TEJA'S RECENT COMMENT THAT BAIL CAN BE CONSIDERED PROVIDED THE COURT IS SATISFIED THE PRISONERS WILL BE PRODUCED BEFORE IT FOR TRIAL AND FOR THIS PURPOSE THE US WOULD HAVE TO GUARANTEE THAT THE ACCUSED WOULD NOT LEAVE INDIA (NEW DELHI 7883).

2. THE GOI HAS NOT RAISED WITH US THE ISSUE OF EXTRADITION IN RELATION TO BAIL FOR THE PRISONERS AND, SO FAR AS WE KNOW, IS NOT "LABORING UNDER INCORRECT IMPRESSION" WITH RESPECT TO THE EXISTENCE OF AN EXTRADITION TREATY.

3. THE PRISONERS, ACCORDING TO WHAT TEJA TOLD US (DELHI 7394), ARE TO BE TRIED UNDER SECTION 3 OF THE OFFICIAL SECRETS ACT, THE CHARGE BEING THAT THEY WERE FOUND IN A RESTRICTED AREA UNDER SUSPICIOUS CIRCUMSTANCES. AS WE READ THE 1931 TREATY, THIS IS CONFIDENTIAL

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PAGE 02 NEW DE 08034 171516Z

NOT A CROME FOR WHICH EXTRADITION WOULD BE GRANTED (ALTHOUGH WE

NOTE TRAFFIC IN DRUGS IS SUCH A CRIME). FURTHER, THE 1931 TREATY PROVIDES THAT A FUGITIVE SHALL NOT BE SURRENDERED IF THE OFFENSE IS OF A POLITICAL CHARACTER. SO IT IS CERTAINLY OPEN TO QUESTION WHETHER THE GOI COULD EXTRADITE THE ACCUSED UNDER THE PRESENT CHARGES. IN ANY EVENT, THEY HAVE PLACED THE MAIN EMPHASIS ON THE NEED FOR A US GUARANTEE THAT THE ACCUSED APPEAR AT TRIAL IF RELEASED ON BAIL, A GUARENTEE WE CANNOT PROVIDE.

4. WE SUGGEST THAT CONGEN CALCUTTA CLARIFY THE EXTRADITION ISSUE WITH BHOSE TO SEE WHETHER IT IS GERMANE, SINCE BHOSE IS THE ONLY ONE WHO HAS MENTIONED IT. THE CONGEN SHOULD FOLLOW UP WITH THE COURT AS APPROPRIATE.
MOYNIHAN

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